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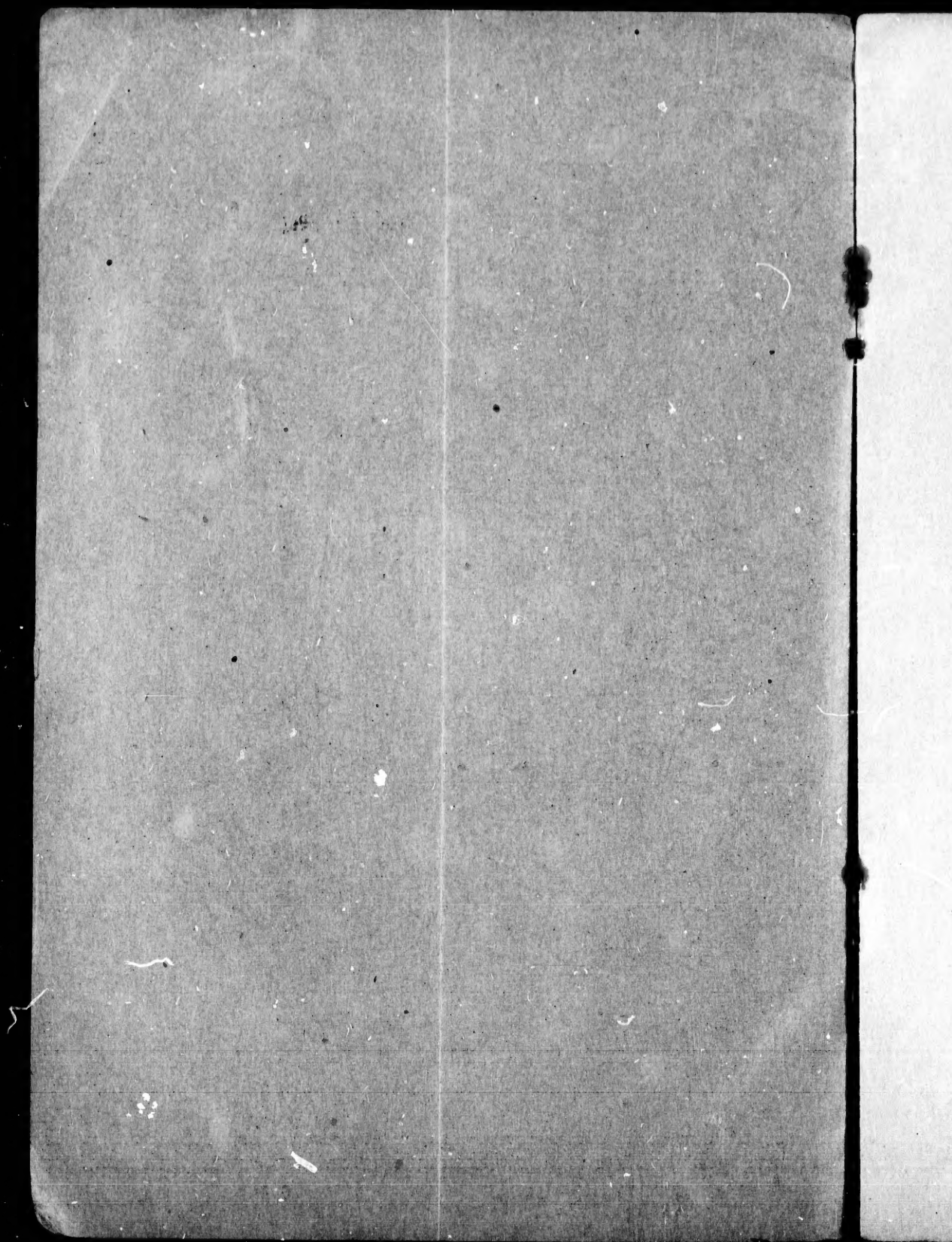
Great North-West Central Railway Company.



MEMORANDUM BY

J. A. CODD.

JAMES HOPE & CO., PRINTERS, OTTAWA.



Great North-West Central Railway Co.

MEMORANDUM BY J. A. CODD.

For the purpose of explaining the present position of the Company, I desire to state as follows :

That by the Act of Parliament of the Dominion of Canada, 49 Vic., Chap. 2, 1886, authority was given to the Governor-in-Council to issue a Charter for the purpose of incorporating the persons undertaking the construction of the North-West Central Railway, provided always that in the event of a Company being so incorporated, it should be provided in the Charter that such Company should be subject to all the then present legal obligations of the North-West Central Railway Company.

At the date referred to in the said Act, the North-West Central Railway Company had legal obligations to me, and through me to other persons, amounting to a large sum of money, actually expended, and also for heavy losses incurred through the default of the said Company ; and that it was at my instigation, through friends to whom I had made the suggestion, that such Act was passed, and that it provided for the payment of such claims so far as the courts might decree then to be legal.

On the 22d July, 1886, a Charter was issued by the Governor-General-in-Council, but did *not* provide that the new Company should be liable for the legal obligations of the old North-West Central Company, as required by the Act 49, Chap. 2, but excluded all liabilities except those due for actual construction or material supplied, thereby destroying my recourse against the Company by ordinary process of law, for the amounts due to me and for which I was liable to others, and still remain liable.

On the 12th September, 1887, the Company entered into an agreement with Her Majesty by which the Company was bound to construct and equip the line [not according to the requirements of the Government or their Engineer from time to time], but according to the conditions set forth in such agreement and in the specification forming a part of it. The said agreement and specification provided, among other things :

1. That the Company should build the line from a point on the Canadian Pacific Railway at or near Brandon—meaning thereby that a permanent connection should be made at such a point with the railway of the Canadian Pacific Company, for the exchange of traffic and perpetual working of the railway in accordance with the provisions of Sub-Section 14, Section 6, Part I. of R. S. 109, which provisions are contained in the Railway Act, 1888, Section 173 ; and it was provided that at such terminal point, sufficient siding accommodation, station, tanks, turn-tables or "Y," and other structures and buildings necessary to meet the requirements of the traffic should be provided, meaning thereby that the terminal point of such railway should be a permanent one, suitable for the erection of such buildings.

2. That the said agreement with Her Majesty also provided that the Company should provide at other points such other stations,

structures and buildings as might be necessary to meet the requirements of the traffic.

3. That the Company were to provide rolling stock necessary to accommodate and to conduct promptly and efficiently the traffic and business of the line.

4. That, through settlements, the railway must be enclosed by fences, and that cattle-guards should be provided at all public highways crossing the railway, at a level with the rails.

5. That the maximum grade was not to exceed 60 ft. to the mile.

6. It provided that the railway should be completed and equipped in accordance with such agreement and specification forming a part thereof, and the fact of such completion and equipment by the Company, necessarily meaning completion and equipment to the standard set forth in the agreement and specification, was to be established by the report of the Chief Engineer of the Government Railways to the Minister of Railways and Canals.

Thereafter, namely, at the close of 1887, desiring to recover such a sum as would enable me to meet the obligations that I was under, I placed myself in communication with various parties in England, where I was then residing, with the object of inducing them to provide money with which to carry out the undertaking. For this purpose I produced the Charter granted to the new Company, and the agreement made by the Company with Her Majesty, referred to above, and by representations made by me in good faith, as to the security offered by the said agreement, that the line would be properly built, equipped, and the rails permanently and legally connected with the Canadian Pacific Railway, so that the said Great North-West Central Railway might possess all the rights and privileges conferred by the Railway Act thereby, as an independent line, always intended to be in connection with the Canadian Pacific Railway, and also by expressing my opinion (now proved to have been correct) as to the value of the traffic to be obtained on the first portion of the line if so equipped, I did induce certain persons to enter into the undertaking with me, with a view of their becoming the shareholders in place of the five persons to whom the new Charter had been granted, upon condition that the outgoing shareholders, or some of them, should undertake that the first fifty miles of railway should be so completed, according to the agreement with Her Majesty, before final payment of £150,000 was required.

These persons, after arranging with others to associate themselves with them, for which purpose they, also in good faith, produced the said agreement of the Company with Her Majesty, agreed to provide £200,000 to purchase the first fifty miles of the railway, built and equipped to the standard set forth by the said agreement and the specification attached thereto, together with the land grant to be earned thereby, and all the shares in the Company with its property of every description. In the negotiations which culminated in this agreement, the great importance of the provision in the Government agreement relating to grades and sufficient equipment for the traffic of the district, was constantly referred to, especially by engineers to whom the matter was submitted, and whose opinion was depended upon.

Having satisfied myself of the position of the parties and the arrangements they had made to meet their engagements, I entered into agreement with the five shareholders at Ottawa, to whom the

Charter had been granted, to purchase the first fifty miles of railway then under construction by them, they to enter into a contract with the Company that they would complete the same in accordance with the terms of the agreement between the Company and Her Majesty, and the specifications thereto attached, and to the satisfaction of the Minister of Railways, so as to earn the land grant. For the line so completed—the land grant, all the shares in the Company and its property of every description—I offered them the full sum of £200,000, upon condition that they consented to pay to the trustee named by me a sum to meet the claim of myself, and others to whom I was liable through my connection with the old North-West Central Railway Company. This proposal was accepted by the five shareholders, as well as by the persons interested with me in London, who approved of it as being the only way left open to settle claims that otherwise would prevent the road being financed in England.

Afterwards, in lieu of this agreement being carried out by the five persons holding the shares in Ottawa, it was found advisable by them to nominate Alphonse Charlebois to carry the agreement out for them, so far as constructing and equipping the railway.

The effect of this was, that upon the shares in the Company being transferred to the new shareholders, the said Alphonse Charlebois, acting in lieu of the original five shareholders, did contract on the 16th September, 1889, as he repeatedly admitted, to do for the Company, that which the Company had contracted to do for Her Majesty, by the agreement made in 1887, namely, to build and equip the said first fifty miles of railway according to the terms of the said agreement made on 12th September, 1887, and the specification attached thereto, so as to earn the land grant.

Upon the persons whom I had arranged with in England becoming shareholders, the contractor was paid \$243,333 and furnished with rails for fifty miles of line, upon the express agreement that the balance of money, £150,000, should not be due or payable until the final report of the Chief Engineer of Government Railways, or Inspector of Railways, was made, that such fifty miles had been constructed and equipped by the Company and was in running order, in accordance with the terms of the agreement with Her Majesty and the specifications forming a part thereof. This was to be a report on the contract as between the Government and the Company, not between the Government and Charlebois. The Chief Engineer was not named in Charlebois' contract, as the Engineer to act between the said contractor and the Company although it was provided that in case disputes should arise on any question, such should be referred to him as referee, if he consented to act, which he never did, and the matter was never referred to him.

The Company, namely, the new shareholders, relied upon the fact that the usual course of the Railway Department in regard to the final inspection of the railway, previous to the line being worked or operated as required in the agreement between the Company and Her Majesty, would be in accordance with Sections 200 and 202 of the Railway Act, 1888, which clearly does not contemplate such inspection being made until the Company notifies the Minister that in their opinion the line is ready for inspection. Certainly the shareholders did not contemplate that such inspection would be made, not only

without application from the Company, but without notification being sent to them of the intention of the Department to cause such inspection to be made.

In July, 1890, I as President of the Company, as well as representing those in England interested in the property, but not shareholders, inspected the line and found it to come so far short of the standard set out in the agreement with Her Majesty and the specification attached thereto, both as to construction and equipment, that I could not recommend my correspondents in England to call for money from their associates, on the representation that it had been completed to the standard agreed upon. Upon my return to Ottawa, therefore, in place of notifying the Minister of Railways, as I had expected to do, and as required by Railway Act, 1888, Section 200, of our intention to operate the line, and that it was ready for inspection, so that the Company might obtain the final report of the Chief Engineer referred to in our contract with Charlebois, that they, the Company, had completed and equipped the line in accordance with the agreement made with Her Majesty and the specification attached, I was compelled to write the following letter to the Minister, warning him that I had reason to believe that an attempt would be made by our contractor, with whom the Department had nothing whatever to do in the matter, to get a report made by the Chief Engineer, passing the line, and pointing out the great injury that would ensue to those interested if, through any inadvertence, such certificate should be given:—

“ OTTAWA, August 4th, 1890.

“ SIR :

“ I have the honor to bring to your notice the position of the present shareholders of this Company, in regard to the contract made between the Company represented by its original shareholders and Her Majesty, dated the 12th September, 1887.

“ On the 17th September, 1889, the present shareholders, who, with trifling exceptions, reside in England, purchased all the shares in the Company from the original holders, represented for that purpose by Mr. A. Charlebois, contractor, upon his undertaking to fulfill the conditions of the said contract with Her Majesty as to the first fifty miles of the line, before final payment was required.

“ The agreement made by the present shareholders was for the purchase of the first fifty miles of railway, built and equipped in complete running order, according to the specification attached to the said contract with Her Majesty, and forming part thereof, together with 320,000 acres of land, to be earned thereby, clear of any liability, under Clause 27 of the Charter of the Company.

“ The price fixed was £200,000, the last instalment being payable upon the line being completed to the satisfaction of the Chief Engineer of Government Railways, as per specification referred to, who was also to certify all debts paid under Clause 27 of the Charter.

“ The price was fixed at this large sum solely in consideration of the class of road and equipment called for in the specification, the purchasers being aware that the first fifty miles passed through a well settled and highly cultivated district for its whole length, and that the traffic immediately developed would require an amount of rolling stock, and other accommodations greatly in excess of that usually considered necessary on a new line of similar length.

“ Reliance was placed upon Clauses 13 and 14 in the specification, with the full knowledge that, if they were fulfilled, the line would pay operating expenses the first autumn.

“ In reference to the above I enclose a report of our Consulting Engineer, Mr. W. Murdoch, C.E., who confirms my opinion, that the rolling stock and accommodation furnished is fully inadequate to comply with Clauses 13 and 14 of the specification, and I beg to request that, as our shareholders are solely dependant for safety upon the certificates of the Chief Engineer of the Government Railways regarding such equipment and debts under Clause 27 of their Charter,

special instructions may be given in this matter, which differs greatly from an ordinary case of inspection.

"I have further to request that immediate attention may be given to this matter, as I believe application has been, or is about to be made to the Chief Engineer for his final certificate, both as to the debts and construction, including equipment. Should the contractor inadvertently be placed in legal position to demand payment without full compliance with Clauses 13 and 14, severe loss would fall upon the shareholders, because, to accommodate the traffic offered, they would be compelled immediately to supply a large amount of rolling stock at their own cost, although included in the price paid the contractor.

"I enclose estimate made by T. Wastie, a man of great experience, of crop of wheat alone which will require to be moved this autumn over our line; and also from the Reeve of Hamiota in regard to this district; other traffic will alone be very considerable.

"In conclusion I may say, that we suffer much from the assertion in London papers that the debts under Clause 27 are not all paid or settled, and we shall be glad to get a certificate to the contrary as soon as possible.

"I have the honor to be;

"Your obedient servant,

"(Signed)

J. A. CODD,

"President.

"To HON.

"MINISTER OF RAILWAYS AND CANALS,

"OTTAWA."

Receipt of my letter was acknowledged by the Department, but a copy of it, or the information contained in it, as well as the confidential report of our consulting Engineer, was immediately supplied to our said contractor, by or from the Department, and have since been used by him greatly to our detriment in court.

Notwithstanding the warning given in my letter of 4th August, on the 13th of August a report was sent from the Department of Railways to our contractor, with whom, I repeat, the Department had nothing to do in the matter, through his solicitors, containing a certificate of the Chief Engineer of Government Railways, dated 10th August, stating that a final inspection of the line had been made and that the railway was completed, equipped and in running order, in accordance with the terms of agreement made by the Company with Her Majesty and the specification attached.

On the same day the solicitors to our contractor, A. Charlebois, demanded payment of the balance of £150,000, on the ground that the Government had made the final inspection of the road, and given a report that it was completed and equipped according to the agreement of the Company with Her Majesty and the specification attached thereto.

The *final* inspection of the line was therefore made, not only without application from the Company, but without their knowledge, no notification having been received by the Company or any of its officers of the intention to so inspect.

The report signed by the Chief Engineer on the 10th August—six days after the Company notified the Department that they had not yet completed their line, and sent out of the Department to the said A. Charlebois's solicitors on the 13th day of August, more than eight days after such warning from the Company had been lodged in such Department—was absolutely *untrue*, in so far as it said that the line had been completed and equipped and was in running order in accordance with the terms of the agreement made with Her Majesty, as the Schedule annexed hereto, showing the state of the line at that date,

in regard to certain things, and the requirements of the said agreement and specification regarding the same matters as stated above will show.

The effect of this erroneous report having been improperly communicated to our contractor in place of to the Company, and moreover the statements in it being untrue as regards completion, has been to deprive the Company of all power to enforce a fulfillment by the said contractor of the terms of his contract, and has enabled the said contractor to take proceedings in court that have caused the shareholders to be saddled with a loss of over \$200,000 beyond the liabilities they undertook, and has enabled him with impunity to break up the financial arrangements made in England based on his contract, to do for the Company that which they had undertaken to do in the agreement made with Her Majesty. The original financial arrangements in England having been upset by the failure to complete and equip the line as agreed, it was impossible to make others until the line was completed; and in order to get possession of the line, the Company was compelled to agree to complete it themselves and yet agree to pay Mr. Charlebois \$68,000 more than the original contract prices, nevertheless, immediately upon obtaining possession, the Company proceeded with the work and opened the line for traffic on the 15th of December last, but now find it impossible to complete any financial arrangements owing to judgments obtained by the said contractor by means of the report erroneously made by the Chief Engineer of Government Railways, without previous communication with the Company holding the contract from the Government, and, finally, possession of the certificate or report, untrue as it is, and has enabled the said Charlebois to obtain an order of the Court of Chancery for sale of the road with, as I believe, the intention of getting possession of the property himself, or, through his friends, for the amount due to him and selling it to others. Those associated with me in England are thereby exposed to the loss of the large cash capital already invested by them in the undertaking, amounting to over \$500,000, made upon representation by me and others in good faith, as to the security offered by the fact that the line would have to be equipped and constructed to meet the requirements set forth in the agreement with Her Majesty and the specification attached, before the balance of the money could be called for, the power to enforce which was taken away by the issue of such certificate to the Company's contractor.

From the foregoing statement it will be apparent that, notwithstanding the efforts of the Company to carry out their agreement with Her Majesty, and to keep faith with the public by operating the line at the earliest time possible, to effect which purpose they even agreed to accept the consequences put upon them by the erroneous report issued by the Department without their application or knowledge, namely, a loss of about \$200,000, they still are utterly powerless to effect any financial arrangement, by reason of the continued damage to their credit, through the control exercised by the judgments of the Courts over their securities.

The above statement will, I think, show that the action of the Government in this matter, not only in the first place deprived myself and others of our rights of recourse against those incorporated for the purpose of constructing the railway, which rights were recognised by

Act 49 Vic. so far as the court might declare them legal, but the irregularities, as in my opinion I must term them, which have since taken place have deprived me and others of the remuneration to which many years of labor in a matter so well calculated to benefit the country justly entitles us, and has exposed those who in good faith have been induced to invest over \$500,000 of their means in the security afforded by the agreement and Charter issued by the Government, to a certain loss of their money, if not ruin.

I, therefore, as the representative of the shareholders and others financially interested in England, as well as on my own behalf, request your aid and influence, that these matters may be looked into, and such action taken as will protect all concerned from the injury done, and enable them to prosecute their undertaking, which at present they are utterly unable to do, or even to continue the possession and operation of their line, owing to the judgments which have been obtained through the possession of a certificate that was false, so far as it stated the line to be completed, equipped, and in running order, in accordance with the contract and specification between the Company and Her Majesty, and which appears to have been improperly obtained from the Department for the purpose of aiding an attempted fraud on the shareholders.

It is submitted that the ordinary principle of common justice which usually holds an employer at all events morally responsible, according to his power to repair an injury done to the property of another by his employees, should not be set aside because, in this case, the employer is the Government of the Dominion of Canada.

SCHEDULE,

Showing the requirements of the agreement made by the Company with Her Majesty, on 12th September, 1887, and the difference existing on the works at date of the final inspection of the railway.

1. That the Company should build the line from a point on the Canadian Pacific Railway at or near Brandon, meaning thereby that a permanent connection should be made at such point with the Canadian Pacific Railway Company for exchange of traffic and perpetual working of the line in accordance with the provision of Sub-Section 14, Section 6, Part I. of Railway Act R. S. 109 and Section 173 in Railway Act, 1888.

1. At the date of inspection the line of the Great North-West Central Railway was not permanently connected with any point on the Canadian Pacific Railway according to the Railway Act. The Company had no legal title, nor had the contractor, to such connection as existed, which could be removed at any hour by the Canadian Pacific Railway Co., who, although they had never been notified, as required by the Statute, had positively refused to allow a permanent connection at that point, nor had application been made to the Railway Committee for approval of the mode of junction. The railway was not therefor legally located or completed from the point required both by charter and agreement.

2. The Company was to provide at such terminal point sufficient siding accommodation, station, tanks, turntables and other structures and buildings necessary to meet the requirements of the traffic, meaning that such terminal point

2. There was no station, tank, turntable, roundhouse, goods, warehouse, or any buildings whatever at the point named; one very small siding was there, but it was totally insufficient for traffic. The Company now have nearly a mile

should be a suitable one for the erection of such buildings and sidings.

3. That such other stations, structures and buildings as might be necessary to meet the requirements of the traffic were to be provided at other points.

4. The Company were to provide rolling stock necessary to accommodate and to conduct promptly and efficiently the traffic and business of the line.

5. Fences were to be provided through settlements, and cattle guards at all stations.

6. The agreement provided that the grades were in no case to exceed 60 feet per mile, which was considered a most important provision by the English shareholders. Each foot of grade causes an enormous increase in the working expenses of the line.

of siding at junction and do not find it sufficient. The point was not only unsuitable, but a dangerous one for a junction.

3. That each other station that was provided stood alone, water tanks excepted. There was no building or structure for the accommodation of freight traffic, no warehouse, cattle chute or means of unloading machinery, although the traffic both in cattle and machinery required them.

4. There were no servicable locomotives at all. There were three very old, second-hand engines, two of which were utterly useless, and the third was so out of repair that it was only by putting bran into the boiler that water could be kept in it from station to station. The cars consisted of only twelve box and twelve flat cars, two first-class and two second class, two combined mail, express and baggage cars, and one caboose. There were no cattle cars, although absolutely necessary for the business of the line. The number of box and flat cars was so short of the requirements of the business of the line, over which it was estimated that 1,000,000 bushels of grain would require to be carried during the season; that Mr. Walter Shanley and Mr. R. L. Light, C.E. stated that they were certainly insufficient, while Mr. Murdoch, C.E., and the superintendent of the line, both estimated an addition of fifty cars of each kind was necessary to do the business of the line, and by practical experience in operating the road the necessity for a larger number has been found.

5. Only half the line was fenced, and that where there was the least settlement. There were no cattle guards at all.

6. The agreement with the Government was made 12th September, 1887; the Company's contract with Charlebois was made September 17th, 1889. At time of inspection, there was a grade of 71 feet per mile contrary to the agreement, and this grade had been authorized by Order-in-Council, passed 6th March, 1890, six months after the Company had made their contract with the said Charlebois, without any communication having taken place with the Company, notwithstanding that the Order-in-Council states that it was passed upon the application of the Company. The Company never applied to the Government to pass such order, or heard of the desire of the Government to do so, and, of course, would not have consented to such alteration, which could only have been applied for in the interests of Mr. Charlebois.

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